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ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
Special Commission 3
New York, 12-30 August 1991

# SUGGESTED AMENDMENTS TO THE DRAFT REGULATIONS ON PROSPECTING, EXPLORATION AND EXPLOITATION OF POLYMETALLIC NODULES IN THE AREA - PART X. ACCOUNTING PRINCIPLES AND PRODEDURE (LOS/PCN/SCN.3/WP.6/Add.7)

## Proposals by the Group of 77

### Article 2 (Use of terms)

Paragraph 4 (new): "For the purposes of this part, 'significant gain or loss' means any total inventory adjustment exceeding a percentage of the total of physical assets or of inventory before adjustment as shall be agreed upon between the Authority and the contractor, in conformity with generally recognized accounting principles."

### Article 137 (Scope of this Part)

Paragraph 1: "The regulations contained in this Part provide a uniform system of accounting to record all financial transactions under the contract, including those related to expenditures incurred prior to the commencement of commercial production which are directly related to the development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract." 1/

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1/ A/3 (13) (6) (h) (i).

Paragraph 1 (bis): "The regulations contained in this Part further provide a uniform system of accounting to provide a system and standards for handling funds, materials and equipment and to provide the basis for preparing the reports required by the regulations under the contract."

Article 139 (Currencies)

Paragraph 1: "The United States dollar shall normally be the unit of account. If a transaction is carried out in another currency, the amount of the transaction shall be converted into United States dollars or another universal unit of account approved by the Authority, at the average of the buying and selling rates quoted by the International Monetary Fund for the date when payment is due."

Article 140 (Accounts and manuals)

Paragraph 1: Delete the words "together with the Accounting Manual".

Paragraph 1 (bis): "The comprehensive chart of accounts and related account definitions shall be consistent with the Accounting Manual submitted by each contractor for approval by the Authority within 60 days from the effective date of the contract".

Article 141 (Accounting for materials and supplies)

Paragraph 2: Substitute the original wording with the following single paragraph: "Materials and supplies furnished from the contractor's stocks shall be charged in accordance with a percentage scale commensurate with their depreciated value agreed upon by the Authority and the contractor."

Paragraph 4: Deleted.

Paragraph 5: Delete the words "and 4".

Paragraph 7: Substitute the original wording with the following: "Each contractor shall conduct, at least once a year or, if special circumstances so warrant, upon the request of the Authority, a physical inventory of the controllable materials maintained by the contractor."

Paragraph 8: Delete the words ", if feasible,".

Paragraph 9: Delete the final sentence.

Paragraph 10 (new): "The costs referred to in this Part shall not be interpreted as including payments of corporate income taxes or similar charges levied by States in respect of the operations of the contractor." 2/

Article 142 (Accounting for equipment)

Paragraph 2: "Each contractor shall conduct, every five years, a physical inventory of capitalized physical assets. Each contractor shall conduct more frequent inventories at the request of the Authority."

Paragraph 4: Delete the final sentence.

Article 143 (Personnel costs)

Paragraph 2: Add the following words at the beginning: "Other costs directly incurred in operations under the contract, such as ...".

Add the following new paragraph: "The salaries, wages and expenses of technical employees directly employed in operations under the contract shall not be included in the overhead costs provided in article 151 but shall be charged directly."

Article 145 (bis)

"Costs for the transfer of technology by the contractor to the Enterprise in respect of the area covered by the contract shall be charged, in the event the contractor is requested to acquire from the owner of the technology the legal right to transfer to the Enterprise any technology used by the contractor in carrying out activities in respect of the area covered by the contract which he is not otherwise legally entitled to transfer." 3/

Article 146 (Charges for affiliates)

Same as former article 147 with the addition of the words "such as competitive bidding" after the words "such other terms and conditions".

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2/ A 3 (13) (6) (p).

3/ A3 (5) (3) (c).

Article 147 (Charges for third-party contracts)

Paragraph 1: "The actual direct costs of contracts for technical and other services supplied by third parties shall be charged, provided that such costs are reasonable and necessary and are not higher than those generally charged for comparable work and services, and that, to the extent possible, have resulted from competitive bidding among potential suppliers."

Paragraph 1 (bis): "The policies followed by the contractor with regard to determining the prices for transactions undertaken with any person, firm or company that, directly or indirectly, controls, is controlled by or is under common control with a contractor shall be disclosed in the financial reports submitted by the contractor to the Authority." 4/

Article 151 (Overhead and administrative costs)

Paragraph 2: "Overhead costs not included in paragraph 1 incurred after the effective date of the execution of the contract shall be charged in accordance with a specific percentage to be agreed upon between the Authority and the contractor."

Paragraph 3: Deleted.

Paragraph 3 (bis): "Overhead costs ... shall be charged in accordance with a specific percentage to be agreed upon between the Authority and the Contractor."

Add the following words after "contractor's negligence": "wilful misconduct".

Paragraph 4: Make the following addition: "The agreed rates ..."

Article 154 (Financial reports)

Paragraph 5: "Each quarterly report shall be prepared on a monthly and aggregate basis and shall be sent to the Authority within 45 days after the end of each quarter. The Authority may make comments and propose adjustments to any report provided that such comments and proposed adjustments are made in writing within six months from the date of submission of a quarterly report."

Paragraph 6: "Each annual report shall be audited and shall be sent to the Authority within 90 days after the end of each calendar year. The

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4/ United Nations Centre on Transnational Corporations (UNCTC), Conclusions on Accounting and Reporting by Transnational Corporations (1988) (United Nations publication, Sales No. E.88.II.A.18), para. 164.

Authority may make comments and propose adjustments to an annual report provided that such comments and proposed adjustments are made in writing within five years from the date of submission of the report."

Article 155 (Inspection and audit)

Paragraph 1: Substitute the original wording by the following paragraph: "An annual audit shall be carried out by reputable and independent accountants at the cost of the contractor. Notwithstanding the annual audit and if special circumstances so warrant, the Authority may designate reputable and independent accountants to conduct at its expense an additional audit. An additional audit may also be carried out by reputable and independent accountants, upon the request of the Authority and at the cost of the contractor, in the event that the accounts submitted to the Authority are found to be inaccurate or incomplete."

Paragraph 3: Add the words "designated by the Authority" after "accountants".

Article 156 (Retention of books, records and documents)

Paragraph 1: "All books, records and documents referred to in article 155 shall be maintained for a period commensurate with the useful life of the equipment and material used by the contractor and, in any event, not less than seven years from the date of issue."

New article 158 (Penalties)

1. The Authority may seek redress for irregularities which, as the result of an independent audit, are traceable to the inadequate or incomplete compliance by the contractor or the Enterprise with the provisions of this Part. The Authority may also request that the contractor or the Enterprise adjust its accounts accordingly.

2. In the event that the contractor or the Enterprise wilfully persists in failing to comply with a request made by the Authority pursuant to this Part, the Authority may impose upon the contractor or the Enterprise monetary penalties proportionate to the seriousness of the violation.

New article 159 (Disputes)

Disputes concerning the interpretation or application of this Part shall be submitted to either the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea or to the arbitration tribunal constituted in accordance with Annex VII of the Convention.

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## Proposals by the Group of 77

## Addendum

### Article 143 (Personnel costs)

Substitute the word "net" for "gross".

### Article 150 (Legal costs)

Substitute "provided such costs were incurred after the effective date of the contract" with "provided such costs were directly related to the development of the productive capacity of the area covered by the contract and the activities related thereto for operations under the contract".

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